

PATENT COOPERATION TREATY
PCT
INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)
(PCT Article 36 and Rule 70)

Applicant's or agent's file reference PCT00456	FOR FURTHER ACTION		See Form PCTA/PEA/416
International application No. PCT/IB2004/000461	International filing date (day/month/year) 20.02.2004	Priority date (day/month/year) 20.02.2004	
<p>International Patent Classification (IPC) or national classification and IPC A61B10/00</p>			
<p>Applicant SACHDEV, Gopal Krishan et al.</p>			
<p>1. This report is the International preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of 4 sheets, as follows:</p> <ul style="list-style-type: none"> <input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in Item 4 of Box No. I and the Supplemental Box. <p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Box No. I Basis of the opinion <input type="checkbox"/> Box No. II Priority <input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input type="checkbox"/> Box No. VIII Certain observations on the international application 			
Date of submission of the demand 19.09.2005	Date of completion of this report 07.03.2006		
Name and mailing address of the international preliminary examining authority:  European Patent Office - Glitschner Str. 103 D-10958 Berlin Tel. +49 30 25901 - 0 Fax: +49 30 25901 - 840	Authorized Officer  Filali, S Telephone No +49 30 25901-599		

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/IB2004/000461

Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:

international search (under Rules 12.3 and 23.1(b))
 publication of the international application (under Rule 12.4)
 international preliminary examination (under Rules 55.2 and/or 55.3)

2. With regard to the elements* of the international application, this report is based on (replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):

Description, Pages

1-13 as originally filed

Claims, Numbers

1-23 received on 22.09.2005 with letter of 19.09.2005

Drawings, Sheets

1/11-11/11 as originally filed

- a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. The amendments have resulted in the cancellation of:

- the description, pages
 - the claims, Nos.
 - the drawings, sheets/figs
 - the sequence listing (*specify*):
 - any table(s) related to sequence listing (*specify*):

4. This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 702(c)).

- the description, pages
 - the claims, Nos.
 - the drawings, sheets/figs
 - the sequence listing (*specify*):
 - any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT
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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes:	Claims	1-23
	No:	Claims	
Inventive step (IS)	Yes:	Claims	
	No:	Claims	1-23
Industrial applicability (IA)	Yes:	Claims	1-23
	No:	Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

**INTERNATIONAL PRELIMINARY
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Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

1 The following documents are referred to in this communication:

D1 : WO 99/61891

2 INDEPENDENT CLAIM 1

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 does not involve an inventive step in the sense of Article 33(3) PCT.

The document D1 is regarded as being the closest prior art to the subject-matter of claim 1, and shows (the references in parentheses applying to this document):

A fixed focus handy ovulation tester (10) comprising an inner casing and a fixed focus eye piece assembly (21) having a bottom inner portion for placing a biological specimen and a top outer portion for viewing the specimen being removably located at the top end of the inner casing (see D1, p.5; I.7 to I.27)

The subject-matter of claim 1 therefore differs from this known D1 in that the fixed focus eye piece assembly accommodates for dioptic variations up to +/- 4 diopters.

As a great number of users has a dioptic defect in their eyes, providing a fixed-focus device is merely one of several straightforward possibilities from which the skilled person would select, in accordance with circumstances, without the exercise of inventive skill, in order to solve the problem posed. The bi-convex lenses of D1 24,26 are prefocused to the sample receiving surface 29, and have a combined magnification of preferably 40x-100x (see D1 p.6, I.10 to I.24)

The same reasoning applies, mutatis mutandis, to the subject-matter of the corresponding independent claims 2-23, which therefore are also considered not inventive.

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